



The Office of Secretary of State

Brian P. Kemp
SECRETARY OF STATE

Vincent R. Russo
General Counsel

NOTICE (SEC-2011-13)

RE: Adoption of Chapter 590-4-5 entitled “Broker-Dealers and Agents” Consisting of Rules 590-4-5-.01 to 590-4-5-.17

TO ALL INTERESTED PERSONS AND PARTIES:

Pursuant to the Official Code of Georgia Annotated, O.C.G.A. §§ 10-5-70 and 50-13-4, notice is hereby given that the Commissioner of Securities of the Office of the Georgia Secretary of State, (hereinafter “Commissioner”) proposes to adopt Chapter 590-4-5 entitled “Broker-Dealers and Agents”. The proposed rules for adoption contained in Chapter 590-4-5 include the following: 590-4-5-.01 “Application Requirements”, 590-4-5-.02 “Examination”, 590-4-5-.03 “Termination or Withdrawal of Registration”, 590-4-5-.04 “Incomplete and Abandoned Applications”, 590-4-5-.05 “Plan Administrators – Exclusion from Broker-Dealer Definition”, 590-4-5-.06 “Books and Records”, 590-4-5-.07 “Reports”, 590-4-5-.08 “Bonds”, 590-4-5-.09 “Notice of Changes in Circumstances”, 590-4-5-.10 “Fees”, 590-4-5-.11 “Broker-Dealer Post-Registration Requirements”, 590-4-5-.12 “Supervisory Requirements”, 590-4-5-.13 “Expiration and Renewal of Registration”, 590-4-6-.14 “Multiple Registrations”, 590-4-6-.15 “Cross Border Transactions”, 590-4-5-.16 “Dishonest or Unethical Business Practices”, and 590-4-5-.17 “Associated Persons of an Issuer Deemed not to be Broker-Dealers.”

Attached with this notice is a synopsis and exact copy of each proposed rule to be adopted. The rules are being adopted under the authority of O.C.G.A. §§ 10-5-70 and 10-5-74. The Commissioner finds that the adoption of the attached rules is necessary and in the public interest as a result of the enactment of the Georgia Uniform Securities Act of 2008.

The Assistant Commissioner, in accordance with O.C.G.A. § 10-5-70(f), shall consider the adoption of the proposed rules at 11:45 a.m., on November 17, 2011, in Room 810, Suite 802 West Tower at 2 Martin Luther King, Jr. Drive, S.E., Atlanta, Georgia 30334.

Copies of this notice, including the synopsis and exact copy of each proposed rule, are available for review on the Securities Divisions’ web page at <http://www.sos.ga.gov/securities>. Interested persons may submit data, views or arguments in writing to the Commissioner. The Commissioner must receive all comments regarding the proposed adoption of the above-referenced Rules from interested persons no later than 5:00 p.m. on November 15, 2011. Written

comments must be sent to: Commissioner of Securities, Securities Division, 2 Martin Luther King, Jr. Drive, S.E., 802 West Tower, Atlanta, Georgia 30334. Written comments may be sent via facsimile to (404) 656-0513, or submitted electronically to SECRules@sos.ga.gov. Please reference "SEC-2011-13" on all comments.

For further information, please contact Tom Zagorsky at (404) 463-0344.

This 13th day of October, 2011.



Vincent R. Russo
Interim Assistant Commissioner of Securities

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-5-.01 ENTITLED
“APPLICATION REQUIREMENTS” BY THE COMMISSIONER OF SECURITIES OF
THE OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-5-.01 is to set forth the requirements and process whereby application for broker-dealer registration may be filed with the Commissioner.

Main Features:

The main features of this rule include a list of each required component of a complete application for broker-dealer registration. Application for broker-dealer registration shall be made on Form BD. Application may be made in paper form or via the Central Registration Depository System (CRD) operated and maintained by FINRA. The Rule also provides specific provisions relating to the registration of a branch office of a broker-dealer.

Text of Rule:

590-4-5-.01 Application Requirements.

(1) Broker-dealer application requirements. A complete application for broker-dealer registration consists of the following and must be filed in paper form with the Commissioner unless as otherwise required pursuant to subsection (4) of this Rule:

(a) A Uniform Application for Broker-Dealer Registration (Form BD) for the broker-dealer applicant;

(b) A Uniform Application for Securities Industry Registration or Transfer (Form U-4) for the designated officer of the applicant and a Form U-4 for each agent of the applicant to be registered (officers of a corporation, members of a limited liability company, or partners of a partnership shall not be deemed agents solely because of their status as officers, members, or partners);

(c) A copy of the applicant’s articles of incorporation, articles of organization, partnership agreement, articles of association, trust agreement, or other documents which indicate the form of organization, certified by the appropriate jurisdiction or by an officer or partner of the applicant;

(d) A balance sheet prepared in accordance with generally accepted accounting practices reflecting the financial condition of the applicant as of a date not more than ninety (90) days prior to the date of such filing. The balance sheet should be prepared by independent certified public accountants or independent public accountants, or must instead be attested by the sworn notarized statement of the applicant’s principal financial officer. If attested by the principal financial officer of the applicant, such officer shall certify as follows: “I am the principal financial officer of (name of dealer). The accompanying balance sheet has been prepared under

my direction and control and presents fairly its financial position on the dates indicated to the best of my knowledge, belief, and ability. (Signature and Title).”

(e) Any other information deemed necessary by the Commissioner to determine a broker-dealer’s financial responsibility or a broker-dealer’s or agent’s business repute or qualifications; and

(f) The appropriate registration fee(s).

(2) Designated officer registration. Broker-dealers must file a Form U-4 application to register an officer or partner in connection with the registration of the broker-dealer. The officer or partner must be a control person of the broker-dealer as defined by federal law, rule, or regulation. The officer or partner must complete the necessary registration and examination requirements. An applicant may designate as its officer or partner a control person registered in Georgia via the Central Registration Depository (“CRD”) System maintained by FINRA. If the officer or partner resigns or is otherwise removed from his or her position, the firm shall make an application to register another officer or partner within thirty (30) days of the effective date of said resignation or removal.

(3) Branch office registration and inspection. A request for registration of a branch office of a broker-dealer may be made upon initial application of the broker-dealer or by amendment to a current registration. No sales-related activity may occur in any branch office location until such time as the broker-dealer receives notification from the Commissioner that such location has been approved as a branch office. The request for registration of a branch office may be made by the submission of Uniform Branch Office Registration Form (Form BR) through CRD for FINRA member firms. For non-FINRA member firms, the request is made by submitting Form BR in paper form to the Commissioner. The fee for registration of each branch office is \$25.00. Simultaneous with the request for registration of a branch office, a supervisor must be designated. A supervisor is not required to be registered as a FINRA principal, but must be registered in Georgia as an agent and is responsible for supervision of the activities of the branch office. A supervisor may not supervise sales activities encompassing a broader range of products than those covered by the supervisor’s qualification examination(s). Within ten (10) business days from when a supervisor ceases to be employed or registered in such capacity by the broker-dealer, a new supervisor, qualified by passage of the appropriate examinations, must be designated. Absent the designation of a new supervisor to the Commissioner within the ten (10) business day period, the registration of a branch office whose supervisor ceases to be employed as such by a broker-dealer may be automatically terminated by the Commissioner. The branch office registration may be reinstated by the Commissioner upon the designation of a qualified supervisor and payment of the branch office registration fee. Each branch office registered with the Commissioner is subject to unannounced inspections at any time during normal business hours.

(4) Central Registration Depository System (CRD).

(a) Whenever the Act or rules require the filing of an application with the Commissioner for broker-dealer or agent registration, members of FINRA or applicants for membership in FINRA shall make such filing electronically through the CRD which is jointly operated by FINRA and

the NASAA. Applicants shall use the applicable uniform form for the submission of the filing in question and shall supplement their electronic filing by filing, in paper form, the items listed in subsections(1)(c) –(1)(f) of this Rule, directly with the Commissioner.

(b) Uniform forms submitted through the CRD that designate Georgia as a jurisdiction in which the filing is to be made are deemed to be filed with the Commissioner and constitute official records of the Commissioner.

Authority: O.C.G.A. Secs. 10-5-35, 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-5-.02 ENTITLED
“EXAMINATION” BY THE COMMISSIONER OF SECURITIES OF THE OFFICE OF
THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-5-.02 is to provide by rule that the principals and agents of a broker-dealer and must pass an examination as required by the Commissioner and described in the Rule.

Main Features:

The main features of this rule include a list of each examination required and recognized by the Commissioner as a condition for registration of principals and agents of a broker-dealer.

Text of Rule:

590-4-5-.02 Examination.

(1) Broker-dealer. Unless specifically exempt as hereinafter provided, before a broker-dealer applicant will be considered eligible for registration, the broker-dealer examinations in the form and content prescribed or approved by the Commissioner must be passed, to the extent required by this Rule, by every principal as defined by federal law, rule, or regulation of a broker-dealer in order to test the principal’s knowledge of the securities business, state and federal securities laws, and the responsibilities of a supervisor in the securities business.

(2) Examinations accepted. The Commissioner recognizes the following general examinations administered by FINRA, and an applicant applying to be registered as a broker-dealer shall provide proof to the Commissioner that its principals have passed:

(a) The Series 63 Uniform Securities Agent State Law Examination, and

(b) One of the following examinations:

1. Series 4 Registered Options Principal Examination;
2. Series 12 Branch Managers Examination;
3. Series 23 General Securities Principal Qualification Examination Sales Supervisor Module;
4. Series 24 General Principal Examination;
5. Series 27 Financial and Operations Principal Examination;
6. Series 26 Investment Company Products/Variable Contracts Principal Examination;
7. Series 39 Direct Participation Programs Principal Examination;
8. Series 53 Municipal Securities Principal Examination; or

9. Series 87 Research Principal Examination.

(c) The Commissioner shall establish or approve the standards for a minimum acceptable grade in determining each applicant's qualification for registration under this provision.

(d) Upon failure to receive a minimum passing grade, the principal of the broker-dealer applicant may retake the examination on the next date available. A second failure or failure to take or retake the examination within a thirty (30)-day period from the date the broker-dealer application was filed, shall be grounds for denial of the broker-dealer application and an order to that effect may be entered by the Commissioner. The broker-dealer applicant shall be considered ineligible for licensing during a period of three (3) months from the date of denial of the broker-dealer application by the Commissioner, at which time a new broker-dealer application may be filed and its eligibility reexamined. The original filing fee shall not be refunded nor applied to a subsequent application for registration under this provision. However, the broker-dealer application shall not be denied if:

1. The broker-dealer applicant is qualified;
2. The broker-dealer applicant meets the requirements of subsection (1)(e); and
3. The principal of that applicant who fails the examination qualifies for an exemption under subsection (1)(g).

(e) The following are the examination requirements for principals of a broker-dealer:

1. In the case of a partnership, a corporation, or another association, including, but not limited to a limited liability company, at least two (2) partners, officers, directors, or persons or members occupying a similar position must satisfy the examination requirement.

2. If the broker-dealer maintains no branch offices and employs no more than ten (10) agents who have contact with the public, only one (1) of those persons must satisfy the examination requirement.

(f) An application shall be deemed incomplete until there is a showing of compliance with the examination requirements or an exemption from those requirements.

(g) The examination requirements may be waived by a proper showing or certification that the principal, prior to the broker-dealer making application with the Commissioner, has:

1. Taken an examination in the form and content approved by the Commissioner within the preceding two (2) years, and passed the examination with the minimum acceptable passing grade for broker-dealer applicants; or

2. Taken an examination in the form and content prescribed or approved by the Commissioner, attained an acceptable passing grade, and thereafter, remained continuously in the securities business, duly licensed by another state.

(3) Broker-dealer agent. An individual applying to be registered as an agent shall provide proof to the Commissioner that the individual has passed:

(a) The Series 63 Uniform Securities Agent State Law Examination administered by FINRA; and

(b) One of the following securities examinations:

1. FINRA Series 1 Registered Representative Examination;
2. FINRA Series 2 Non-Member General Securities Examination;
3. FINRA Series 6 Investment Company Products/Variable Contracts Representative Examination;
4. FINRA Series 7 General Securities Representative Examination;
5. FINRA Series 22 Direct Participation Programs Representative Examination;
6. FINRA Series 52 Municipal Securities Representative Examination;
7. NASAA Real Estate Securities Examination; or
8. FINRA Series 79 Investment Banking Representative Examination.

(4) An applicant who wishes to rely upon his or her passing any examination other than those enumerated in Paragraphs (1) or (2) above or who wishes to request a waiver of the examination requirements of this Rule must submit a written request for consideration identifying the examination in question, its content, and the agency administering the examination, or the reason why a waiver should be granted by the Commissioner. The Commissioner may decide whether to accept such examination results or to grant a waiver of the examination requirements.

(5) Any person whose most recent registration as a broker-dealer or agent has been terminated for two (2) or more years immediately preceding application to the Commissioner for registration shall be required to pass the Series 63 Uniform Securities Agent State Law Examination administered by FINRA and any other examination required by the Commissioner pursuant to this Rule. The Commissioner may find the applicant qualified by other examinations or significant and comprehensive experience or expertise in the securities business.

(6) The Commissioner may cooperate with registered securities associations and national securities exchanges in devising and administering tests, and require that applicants pay such association or reasonable exchange fees or charges to defray the costs incurred by such association or exchange in administering the tests.

Authority: O.C.G.A. Secs. 10-5-41, 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-5-.03 ENTITLED
“TERMINATION OR WITHDRAWAL OF REGISTRATION” BY THE
COMMISSIONER OF SECURITIES OF THE OFFICE OF THE GEORGIA
SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-5-.03 is to provide by rule for the termination or withdrawal of a registration or application for registration by the Commissioner under specific circumstances.

Main Features:

The main features of this rule include an articulation of those circumstances whereby the Commissioner may issue an order that requires the registration to be canceled or terminated or the application to be denied or may cancel or terminate the registration or applicant's status on the CRD.

Text of Rule:

590-4-5-.03 Termination or Withdrawal of Registration.

(1) If the Commissioner determines that a registrant or applicant for registration is no longer in existence, has ceased to act as a broker-dealer or agent, is the subject of an adjudication of incapacity, is subject to the control of a committee, conservator or guardian, or cannot reasonably be located, the Commissioner may issue an order that requires the registration to be canceled or terminated or the application to be denied or may cancel or terminate the registration or applicant's status on the CRD. The Commissioner may reinstate a canceled or terminated registration, with or without a hearing, and may make the registration retroactive.

(2) The entry of such an order by the Commissioner shall constitute a final order, shall be deemed to be in the public interest and shall not be deemed to constitute findings of fact or conclusions of law related to other persons. The entry of such an order shall not be deemed to be a waiver or estoppel on the part of the Commissioner from proceeding in individual actions against any persons who may have violated the Act, nor shall such an order prevent the Commissioner from bringing individual actions against any persons who have violated the Act or Rules, if such violation was not known to the Commissioner at the time the order was issued.

(3) No broker-dealer or issuer shall employ any agent who is not registered as required by the Act, and each such broker-dealer or issuer shall promptly notify the Commissioner of its termination of such agent's employment. The registration of such agent shall automatically be terminated from the time of termination of employment. Said notification may be accomplished by filing the necessary documents with the CRD. If the agent is not registered with the CRD, notification shall be accomplished by filing a Uniform Termination Notice for Securities Industry Registration (U-5 Form) with the Commissioner. As used herein, the word "promptly" means that the U-5 Form should be filed as soon as possible, consistent with the time period specified in the CRD filing procedures.

(4) To withdraw a broker-dealer registration, a broker-dealer that is a FINRA member must submit a Form BDW (Uniform Request for Broker-Dealer Withdrawal) to the CRD. Non-FINRA member broker-dealers must submit Form BDW to the Commissioner's office.

(5) Effective Date. Every notice of withdrawal filed pursuant to this Rule shall become effective sixty (60) days after the filing with CRD, or within such shorter period of time as the Commissioner may determine. If, prior to the effective date of any notice of withdrawal, the Commissioner has instituted a proceeding to suspend or revoke registration or to impose terms or conditions upon withdrawal pursuant to Section 10-5-41 of the Act, the notice of withdrawal shall not become effective except at such time, and upon such terms and conditions, as the Commissioner deems necessary or appropriate considering the public interest or the protection of investors.

Authority: O.C.G.A. Secs. 10-5-37, 10-5-38, 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-5-.04 ENTITLED
“INCOMPLETE AND ABANDONED APPLICATIONS” BY THE COMMISSIONER OF
SECURITIES OF THE OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-5-.04 is to state those conditions under which an application for registration as a broker-dealer or agent shall be considered deficient by the Commissioner.

Main Features:

The main features of this rule include a list of those conditions which shall render an application for registration as a broker-dealer or agent deficient.

Text of Rule:

590-4-5-.04 Incomplete and Abandoned Applications.

(1) An application for registration as a broker-dealer or agent pursuant to the Act is considered filed when the Commissioner receives the application and required filing fees.

(2) Any application for registration as a broker-dealer or agent is deficient if any of the following conditions exist:

- (a) The application is not in proper form;
- (b) The application is not in compliance with any provision of the Act; or
- (c) The application is not in compliance with any other state or federal law, statute, rule or regulation.

(3) When an application is found to be deficient, the Commissioner may send a deficiency letter to the applicant stating the grounds of deficiency and, if the applicant is an agent, to the broker-dealer or issuer who employs or proposes to employ such applicant. Any application for registration as a broker-dealer or agent shall be deemed to be abandoned by the applicant if the Commissioner receives no communication from the applicant for a period of sixty (60) days. Upon declaring that the application is abandoned, the Commissioner may unilaterally and without further notice to the applicant dismiss the application and change the status of the application on the CRD to “abandoned.”

Authority: O.C.G.A. Secs. 10-5-35, 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-5-.05 ENTITLED
“PLAN ADMINISTRATORS – EXCLUSION FROM BROKER-DEALER DEFINITION”
BY THE COMMISSIONER OF SECURITIES OF THE OFFICE OF THE GEORGIA
SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-5-.05 is to provide by rule for an exclusion from the Act’s definition of broker-dealer to entities that administer certain types of plans.

Main Features:

The main feature of this rule is a broker-dealer exclusion for entities that administer certain types of plans.

Text of Rule:

590-4-5-.05 Plan Administrators – Exclusion from Broker-Dealer Definition.

Entities that administer the types of plans described in Section 10-5-11(21) of the Act on behalf of the entities described in Section 10-5-11(21) of the Act are excluded from the broker-dealer definition of Section 10-5-2(3) of the Act, unless they meet such definition by virtue of other activities or characteristics not strictly related to the administration of such plans.

Authority: O.C.G.A. Secs. 10-5-2, 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-5-.06 ENTITLED
“BOOKS AND RECORDS” BY THE COMMISSIONER OF SECURITIES OF THE
OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-5-.06 is to provide by rule for the maintenance of certain books and records by all broker-dealers and broker-dealer agents.

Main Features:

The main feature of this rule is to enumerate with specificity those books and records required to be maintained by all broker-dealers and broker-dealer agents. The Rule also provides that such books and records shall be subject to inspection by the Commissioner at any time and without prior notice. Finally, the Rule provides the fee applicable to the Commissioner's routine examination of a broker-dealer firm.

Text of Rule:

590-4-5-.06 Books and Records.

(1) All broker-dealers and agents who are registered or required to be registered with the SEC or are members of FINRA or any national securities exchange registered with the SEC shall make, keep and preserve such records as the SEC, FINRA, and national securities exchanges registered with the SEC require be made, kept, and preserved. These records shall be subject to inspection by the Commissioner. The records of a broker-dealer and agent registered or required to be registered under the Act are subject to such reasonable periodic or special inspections by a representative of the Commissioner as the Commissioner considers necessary or appropriate in the public interest and for the protection of investors. An inspection may be made at any time and without prior notice. The Commissioner may copy and remove any record the Commissioner reasonably considers necessary or appropriate to conduct the inspection. The fee for a routine examination of a broker-dealer shall be thirty-five (35) dollars per working hour with the total fee not to exceed \$1,000.

(2) Broker-dealers that are not registered with the SEC or are not members of FINRA or of any national securities exchange registered with the SEC shall make and keep the following records:

(a) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. These records shall show the account for which each such transaction was effected, the names and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date and the names or other designation of the person(s) from whom, purchased or received or to whom sold or delivered.

(b) Ledgers (or other records) reflecting all assets and liabilities, income and expenses and capital accounts.

(c) Ledger accounts (or other records) itemizing separately, as to each cash and margin account of every customer and of such broker-dealer and partners thereof, all purchases, sales, receipts, and deliveries of securities for such account and all other debits and credits to such account.

(d) Ledgers (or other records) reflecting the following:

1. Securities in transfer;
2. Dividends and interest received;
3. Securities borrowed and securities loaned;
4. Money borrowed and money loaned (together with a record of the collateral therefore and any substitutions in such collateral); and
5. Securities failed to receive and failed to deliver.

(e) A securities record or ledger reflecting separately for each security, as of the clearance dates, all “long” or “short” positions (including securities in safekeeping) carried by such broker-dealer for its account or for the account of its customers or partners showing the location of all securities “long” and the offsetting position to all securities “short” and, in all cases, the name or designation of the account in which each position is carried.

(f) A memorandum of each brokerage order and of any other instruction given or received for the purchase or sale of securities whether executed or unexecuted. This memorandum shall show the terms and conditions of the order or instruction and of any modification or cancellation thereof, the account for which the order or instruction was entered, the time of entry, the price at which the order or instruction was executed and, to the extent feasible, the time of execution or cancellation and whether the order was solicited or unsolicited. Orders entered pursuant to the exercise of discretionary power by such broker-dealer, or any associated person thereof, shall be so designated. The term “instruction” shall be deemed to include instructions between partners and associated persons of a broker-dealer. The term “time of entry” shall be deemed to mean the time when such broker-dealer transmits the order or instruction for execution, or, if it is not so transmitted, the time when it was received.

(g) A memorandum of each purchase or sale of securities for the account of such broker-dealer showing the price and, to the extent feasible, the time of execution; and, in addition, where such purchase or sale is with a customer other than a broker or dealer, a memorandum of each order received, showing the time of receipt, the terms and conditions of the order, and the account in which it was entered.

(h) Copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash and other items for the accounts of customers and partners of such broker-dealer.

(i) A record in respect of each cash and margin account with such broker-dealer containing the name and address of the beneficial owner of such account and, in the case of a margin account, the signature of such owner; provided, however, that in the case of a joint account or an account

of a corporation, limited liability company or partnership, such records are required only in respect of the person or persons authorized to transact business for such account.

(j) A record of all puts, calls, spreads, straddles and other options that such broker-dealer has granted or guaranteed containing, at least, an identification of the security and the number of units involved.

(k) A record of the proof of money balances of all ledger accounts in the form of trial balances. These trial balances shall be prepared currently at least once a month.

(l) An application for employment executed by each "associated person" (as hereinafter defined) of such broker-dealer that is approved in writing by an authorized representative of such broker-dealer and contains at least the following information with respect to such associated person:

1. Name, address, social security number and the starting date of employment or other association with the broker-dealer;

2. Date of birth;

3. The educational institutions attended and whether the associated person graduated therefrom;

4. A complete, consecutively ordered statement of all business connections for at least the preceding seven (7) years, including reason(s) for leaving each prior employment and whether the employment was part-time or full-time;

5. A record of any denial of membership or registration and of any disciplinary action taken or sanction imposed upon him or her by any Federal or State agency or any national securities exchange or national securities association, including any finding that he or she was a cause of any disciplinary action or had violated any law;

6. A record of any denial, suspension, expulsion or revocation of membership in any national securities association, securities exchange or registration with any state, federal or governmental agency with which he or she was associated in any capacity when such action was taken;

7. A record of any permanent or temporary injunction entered against him or her or any member of a national securities association or stock exchange or broker or dealer with which he or she was associated in any capacity at the time such injunction was entered;

8. A record of any arrests, indictments or convictions for any felony or any misdemeanor, except minor traffic offenses, of which he or she has been the subject;

9. A record of any other name or names by which he or she has been known or has used; and

10. A record of all licenses, registrations and memberships related to securities that he or she holds.

11. For purposes of Subsection (2)(1) of this Rule, the term “associated person” shall mean a partner, officer, director, agent, trader, manager, any employee or any independent contractor handling funds or securities or soliciting transactions or accounts for such broker-dealer.

(3) Broker-dealers not registered with the SEC or not members of FINRA or of any national securities exchange registered with the SEC shall preserve for a period of not less than five (5) years, the first two (2) years in an easily accessible place, the records required to be maintained by Sections (1) or (2) above and the following:

(a) All checkbooks, bank statements, cancelled checks and cash reconciliations relating to the business of the broker-dealer;

(b) All invoices (or copies thereof) received by the broker-dealer from any other person relating to the business of the broker-dealer, whether the broker-dealer paid the invoice or the invoice is still payable, and, where the broker-dealer has paid the invoice, all records of the payment made;

(c) All invoices (or copies thereof) sent by the broker-dealer to any other person relating to the business of the broker-dealer, whether the broker-dealer has received any payment from the other person or any part of the invoice is still receivable, and, where the broker-dealer has received a payment, either in full or in part, on the invoice, all records of the payment received;

(d) Originals (maintained in paper or electronic media storage) of all communications received and copies of all written and electronic communications sent by such broker-dealer (including interoffice memoranda and communications) relating to the business of the broker-dealer;

(e) All trial balances, financial statements, branch office reconciliations and internal audit working papers, relating to the business of the broker-dealer;

(f) All guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any accounts, and copies of resolutions empowering an agent to act on behalf of a corporation, limited liability company, partnership or other third parties; and

(g) All written agreements (or copies thereof) entered into by such broker-dealer relating to its business, including agreements with respect to any account.

(4) Broker-dealers not registered with the SEC or not members of FINRA or of any national securities exchange registered with the SEC that buy and sell securities or hold securities for the account of customers shall preserve for a period of not less than five (5) years after the closing of any customer’s account, for the first (2) two years in an easily accessible place, all account cards, records or other documents that relate to the opening and maintenance of any customer’s account, including all records and documents relating to the terms and conditions of such account (in paper or electronic media storage).

(5) Broker-dealers not registered with the SEC or not members of FINRA or of any national securities exchange registered with the SEC that buy and sell securities or hold securities for the account of customers shall maintain and preserve all records with respect to “associated persons”

required by Subsection (2)(1) above and all similar records required to be kept by other agencies for a period of at least five (5) years after the employment of the “associated person” has terminated and he or she has no other connection with the broker-dealer.

(6) Broker-dealers not registered with the SEC or members of FINRA or of any national securities exchange registered with the SEC that do not hold securities for the account of customers and whose securities transactions are limited to selling securities shall make and maintain the following records:

(a) With respect to every sale of securities made by such broker-dealers, the following records shall be made and maintained for five (5) years, for the first two (2) years in an easily accessible place:

1. A description of the types and amounts of securities sold;
2. The date of the sale;
3. The sales price and how such price was determined;
4. The commission earned and received for such sale by the broker-dealer and any agent;
5. The name and address of:
 - (i) The person to whom the security(ies) was (were) sold;
 - (ii) The agent who made the sale; and
 - (iii) The issuer or other person on whose behalf the sale was made;

(b) Originals of all communications received and copies of all communications sent by such broker-dealer (including interoffice memoranda and communications) relating to the sale of securities; and

(c) For each agent employed, a copy of the agent’s application to the Commissioner for registration as an agent and all orders, notices or correspondence received by the broker-dealer with respect to such agent’s registration.

(7) Every broker-dealer shall preserve, during the life of the enterprise and of any successor enterprise, all partnership articles or, in the case of a corporation or limited liability company, all articles of incorporation or charter, minute books and stock certificate books or similar documents.

(8) Agents who are not subject to the record keeping requirements of the SEC, FINRA or any national securities exchange registered with the SEC shall make and maintain for five (5) years, for the first (2) two years in an easily accessible place, a record of all commissions, overrides, draws, salary, expenses and other compensation or remuneration received in connection with his or her securities sales efforts and the following records with respect to every sale of securities in which such agent participates in any way:

- (a) A description of the type and amount of securities sold;
 - (b) The date of the sale;
 - (c) The sales price and how such price was determined;
 - (d) The commission earned and received for such sale;
 - (e) A copy of any sales confirmation, subscription agreement and other contract relating to the sale;
 - (f) The name and address of the purchaser; and
 - (g) The name and address of any person in addition to the agent who participated in the sale, a description of the nature of the participation and the compensation or remuneration received by such other person for his or her assistance.
- (9) Any record required by this Rule to be preserved and maintained may, after it is no longer required to be kept in an easily accessible place, be maintained in any form admissible into evidence pursuant to Code Section 24-5-26. Such records may be thus maintained at any time if equipment for viewing and reproducing such records is immediately accessible and any cost of such viewing or reproduction will be borne by the broker-dealer or agent.
- (10) Any broker-dealer that is registered with the SEC, is a member of FINRA or is a member of any national securities exchange registered with the SEC that fulfills the reporting requirements of the SEC, FINRA or national securities exchange, as it is required, shall be deemed to be in compliance with reporting requirements of the Act and the Rules.

Authority: O.C.G.A. Secs. 10-5-40, 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-5-.07 ENTITLED
“REPORTS” BY THE COMMISSIONER OF SECURITIES OF THE OFFICE OF THE
GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-5-.07 is to provide by rule for the filing of certain reports by every broker-dealer registered under the Act.

Main Features:

The main feature of this rule is to enumerate with specificity those reports which shall be filed by every broker-dealer registered under the Act.

Text of Rule:

590-4-5-.07 Reports.

(1) For every broker-dealer registered under the Act, the following are the requirements for filing reports:

(a) Every broker-dealer subject to this Rule shall prepare and submit to the Commissioner, upon request, reports of financial condition containing the information required:

1. As of a date within sixty (60) days of the date of filing an application for a license as a broker-dealer; and
2. Annually, as of the close of the broker-dealer fiscal year.

(b) The annual reports shall be prepared not more than sixty (60) days after the date as of which the firm's financial condition is reported. If the applicant or licensee is registered with the SEC as a broker-dealer, the reports of financial condition as filed with the SEC shall be deemed to be in compliance herewith.

(2) Each report of financial condition prepared under Subsection (1) shall be prepared in accordance with the following requirements:

(a) The report of a broker-dealer shall be certified by a certified public accountant or a public accountant who shall be independent, except a report prepared under Subsection (1)(b) that is not required to be certified under the rules of the SEC or the Public Company Accounting Oversight Board.

(b) Attached to the report shall be an oath or affirmation. This oath of affirmation shall demonstrate that, to the best knowledge and belief of the person making the oath or affirmation, the financial statement and supporting schedules are true and correct. This oath or affirmation shall be made before a person duly authorized to administer the oaths or affirmations.

(c) If the broker-dealer is a:

1. Sole proprietorship, the oath or affirmation shall be made by the proprietor;
2. Partnership, it shall be made by a general partner; or
3. Corporation or limited liability company, it shall be made by a duly authorized officer or member.

(d) If statements of financial condition furnished pursuant to the requirements of broker-dealer reports are bound separately from the balance of the report and are deemed confidential under the Securities Exchange Act of 1934, they shall be deemed confidential, except that they shall be available for official use by any official or employee of the United States or any state, national securities exchanges and national securities associations of which the person preparing the report is a member, and any other person to whom the Commissioner authorizes disclosure of the information as being in the public interest.

(3) The requirements for the use of certain statements filed with the SEC and national securities exchanges are as follows:

(a) Any broker-dealer who is subject to the provisions of Subsection (1) may prepare, in lieu of the report required by that Subsection, a copy of any financial statements that it is, or has been, required to file with FINRA or any national securities exchange of which it is a member, provided that the financial statements reflect the financial condition as of a date not more than sixty (60) days prior to the date required in Subsection (1) by the Commissioner and the report, as filed with the Commissioner, meets the requirements of this Rule and contains the information called for by it.

(b) At the request of any broker-dealer who is an investment company registered under the Investment Company Act of 1940, or a sponsor or depositor of a registered investment company who effects transactions in securities only with, or on behalf of, the registered investment company, the Commissioner shall accept any statement of its financial condition filed pursuant to Sections 13 or 15(d) of the Securities Exchange Act of 1934 or Section 30 of the Investment Company Act of 1940 and the rules and regulations promulgated by the Commissioner.

(4) In the event any broker-dealer finds that it cannot prepare its report for any year within the time specified in Subsection (1) or (3) without undue hardship, it may file with the Commissioner an application for an extension of time to a specified date, which shall not be more than ninety (90) days after the date as of which its financial condition is reported. The application shall state the reasons for the requested extension and contain an agreement to prepare the report on or before the specified date.

(5) The Commissioner may provide by order for the electronic filing of the reports required under this Rule.

Authority: O.C.G.A. Secs. 10-5-40, 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-5-.08 ENTITLED
“BONDS” BY THE COMMISSIONER OF SECURITIES OF THE OFFICE OF THE
GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-5-.08 is to provide by rule for the establishment of a bonding requirement for broker-dealers having custody of, or discretionary authority over, funds or securities of a customer or client.

Main Features:

The main feature of this rule is to establish a bonding requirement for broker-dealers having custody of, or discretionary authority over, funds or securities of a customer or client in the amount of \$25,000. The Rule further provides that the bonding requirements of this Rule shall not be applicable under certain specific conditions.

Text of Rule:

590-4-5-.08 Bonds.

(1) Except as otherwise provided for in this Rule, no applicant or broker-dealer that has custody of, or discretionary authority over, funds or securities of a customer or client shall be registered or renewed as a broker-dealer under Article 4 of the Act until the applicant files a bond satisfactory to the Commissioner in the amount of \$25,000.00.

(2) The bonding requirements of this Rule shall not be applicable if broker-dealer:

(a) Has a minimum net worth of not less than \$250,000.00; or

(b) Is registered under Section 15(b) of the Securities Exchange Act of 1934, is a member of FINRA or a national securities exchange registered with the SEC, and is a member of the Securities Investors Protection Corporation or is specifically excluded from membership pursuant to the Securities Investors Protection Act of 1970, as amended, 15 U.S.C.A. § 78aaa, et seq., because its business consists exclusively of one or more of the following categories:

1. The distribution of shares of registered open-end investment companies or unit investment trusts;

2. The sale of variable annuities;

3. The business of insurance; or

4. The business of rendering investment advisory services to one or more registered investment companies or insurance companies separate accounts.

(3) The Commissioner may, at any time, order a broker-dealer to provide additional proof of financial responsibility if the Commissioner determines that is necessary to adequately protect investors.

(4) The requirement for the filing of such bond by an applicant for registration or renewal as a broker-dealer or agent shall not be applicable if exempted or preempted by federal law.

Authority: O.C.G.A. Secs. 10-5-40, 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-5-.09 ENTITLED
“NOTICE OF CHANGES IN CIRCUMSTANCES” BY THE COMMISSIONER OF
SECURITIES OF THE OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-5-.09 is to provide by rule for a requirement that every broker-dealer or applicant promptly notify the Commissioner, in writing, of any material change in such broker-dealer’s application.

Main Features:

The main feature of this rule is to establish a requirement that every broker-dealer or applicant promptly notify the Commissioner, in writing, of any material change in such broker-dealer’s application. The Rule further provides a non-exclusive list events which shall constitute a material change.

Text of Rule:

590-4-5-.09 Notice of Changes in Circumstances.

(1) Every broker-dealer or applicant shall promptly notify the Commissioner, in writing, of any material change in any information, exhibits or schedules disclosed in the application. A correction amendment shall be filed at the time of the occurrence or promptly after discovery of the change. Material changes include, but are not limited to, the following:

(a) Change in firm name, ownership, management, control or any of its partners, officers or persons in similar positions.

(b) Change in principal office address.

(c) Change in principal office or branch office managers, provided the offices are located in Georgia.

(d) Change in the type of entity or general plan of the broker-dealer business, method of operation or type of securities in which it is dealing or trading.

(e) Insolvency, either in the sense that liabilities exceed assets or in the sense that obligations cannot be met as they mature.

(f) Change with the net liquid capital or bond requirements, including dissolution, liquidation or noncompliance.

(g) Termination of business or discontinuance of activities as a broker-dealer.

(h) The broker-dealer or applicant is the subject of an order, a proceeding or an institution of a proceeding by or in any civil court, criminal court or administrative agency involving any aspect of the securities business, any felony or a U.S. Post Office fraud order.

(i) The report required by Subsection (1)(i) above shall be accompanied by a copy of any notice, order, pleading, indictment, accusation or similar legal document that such broker-dealer, agent or principal has received in the case.

(2) Every agent or applicant shall promptly notify the Commissioner in writing of any material changes in any information, exhibits or schedules disclosed in his or her application. A correction amendment shall be filed at the time of the occurrence or promptly after discovery of the change. Material changes include, but are not limited to, the following:

(a) Change of address.

(b) Termination of agency with the broker-dealer or issuer with whom licensed.

(c) The filing of a criminal charge or civil action against the applicant in which a fraudulent, dishonest or investment-related act is alleged.

(d) The agent or applicant becomes aware that it, he or she is the subject of an order, a proceeding or an institution of a proceeding by or in any civil court, criminal court or administrative agency involving any aspect of the securities business, any felony or a U.S. Post Office fraud order.

(3) Any broker-dealer or agent who fulfills the reporting requirements of CRD shall be deemed to be in compliance with reporting requirements of the Act and the Rules.

Authority: O.C.G.A. Secs. 10-5-35, 10-5-36, 10-5-40, 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-5-.10 ENTITLED
“FEES” BY THE COMMISSIONER OF SECURITIES OF THE OFFICE OF THE
GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-5-.10 is to provide by rule for the payment of filing or notice fees by means of the CRD system.

Main Features:

The main feature of this rule is to establish that a person required to pay a filing or notice fee under Section 10-5-39 shall transmit the fee through CRD.

Text of Rule:

590-4-5-.10 Fees.

(1) A person required to pay a filing or notice fee under Section 10-5-39 shall transmit the fee through CRD.

(2) In addition to the above fees, each applicant shall pay any and all processing costs or charges imposed by CRD incident to the registration or renewal.

Authority: O.C.G.A. Secs. 10-5-39, 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-5-.11 ENTITLED
“BROKER-DEALER POST-REGISTRATION REQUIREMENTS” BY THE
COMMISSIONER OF SECURITIES OF THE OFFICE OF THE GEORGIA
SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-5-.11 is to provide by rule for the applicability of certain financial requirements to broker-dealers.

Main Features:

The main feature of this rule is to establish net worth and net capital requirements applicable to broker-dealers under certain specific conditions described in the Rule.

Text of Rule:

590-4-5-.11 Broker-Dealer Post-Registration Requirements.

Financial Requirements. Any broker-dealer that is not registered with the SEC, is not a member of FINRA, or is not a member of any national securities exchange registered with the SEC must have sufficient assets to meet its obligations as they mature. A broker-dealer will be considered to have sufficient assets to meet its obligations as they mature if:

(a) In the case of a broker-dealer who proposes to buy and sell securities or hold securities for the account of customers:

1. Has not less than \$15,000 net worth and not less than \$15,000 in liquid assets; or
2. Is subject to, and in compliance with, the net capital rules of the SEC; or
3. Is exempt from the net capital rules of the SEC by virtue of membership in an exchange and is in compliance with the net capital rules of the exchange;

(b) In the case of a broker-dealer who proposes only to sell securities and will not hold securities for the account of customers, has not less than \$5,000 net worth and not less than \$5,000 in liquid assets.

Authority: O.C.G.A. Secs. 10-5-40, 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-5-.12 ENTITLED
“SUPERVISORY REQUIREMENTS” BY THE COMMISSIONER OF SECURITIES OF
THE OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-5-.12 is to provide by rule for the establishment of supervisory requirements applicable to every broker-dealer registered, or required to be registered, under the Act.

Main Features:

The main feature of this rule is to enumerate those specific supervisory requirements applicable to every broker-dealer registered, or required to be registered, under the Act.

Text of Rule:

590-4-5-.12 Supervisory Requirements.

(1) Every broker-dealer registered, or required to be registered, under the Act shall exercise diligent supervision over the activities of its agents and associated persons.

(a) Each agent and other associated person shall be subject to the supervision of a designated supervisor.

(b) Written procedures, a copy of which shall be kept or capable of being accessed in each Office of Supervisory Jurisdiction (“OSJ”), shall be established, maintained and enforced, and shall set forth the standards and procedures adopted to comply with the requirements imposed by the Act and the Rules, including, but not limited to, the following:

1. Administrative review and written approval of all new customer accounts;
2. Periodic examination of customer accounts to detect and prevent irregularities or abuses;
3. Prompt administrative review of all customer complaints and arbitrations;
4. Prompt administrative review of correspondence pertaining to the solicitation and execution of securities transactions; and
5. The review by the designated supervisor, and his or her written approval, of the delegation by any customer of discretionary authority with respect to his or her account, and the frequent, periodic examination of all such discretionary accounts to prevent irregularities or abuses.

(c) Each registered agent, individually or collectively, shall participate, not less than annually, in an interview or meeting conducted by persons designated by the broker-dealer at which compliance matters relevant to the activities of the agent(s) are discussed. Such interview or

meeting may occur in conjunction with the discussion of other matters and may be conducted at a central or regional location or at the agent's place of business.

(d) Each broker-dealer shall conduct a review, at least annually, of the businesses in which it and its registered agents engage that shall be reasonably designed to assist in detecting and preventing violations of, and achieving compliance with, the Act and the Rules. Each broker-dealer shall review the activities of each of its offices, including periodic examinations of customer accounts to detect and prevent irregularities or abuses, and each broker-dealer shall conduct at least an annual inspection of each OSJ. Each branch office of the broker-dealer shall be inspected according to a cycle that shall be set forth in the broker-dealer's written supervisory and inspection procedures. In establishing such a cycle, the broker-dealer shall give consideration to the nature and complexity of the securities activities for which the location is responsible, the volume of business done and the number of associated persons assigned to the location. Each broker-dealer shall retain a written record of the dates upon which each review and inspection is conducted.

(e) It shall be the responsibility of each broker-dealer and supervisor to ascertain that all agents are properly registered, as required by the Act and the Rules, prior to making offers or sales of securities.

(f) It shall be the responsibility of each broker-dealer and their supervisors to ensure that all associated persons of such broker-dealer are properly trained regarding the disclosure requirements and the civil and criminal liability provisions of the Act.

(g) It shall be the responsibility of each broker-dealer and their supervisors to approve all outside investment and securities business activities of each agent prior to the agent engaging in such activity.

(2) It shall be the responsibility of each broker-dealer to ensure that all broker-dealer and agent disciplinary data required by the Act and these Rules is promptly and accurately reported in accordance with the requirements of the CRD, or as the Commissioner may designate for broker-dealers that are not registered with the SEC, are not members of FINRA or are not members of any national securities exchange registered with the SEC.

(3) Every issuer who employs any broker-dealer or agent in connection with the sale of securities shall comply with the supervision requirements as set forth in the Act and these Rules.

Authority: O.C.G.A. Secs. 10-5-31, 10-5-35, 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-5-.13 ENTITLED
“EXPIRATION AND RENEWAL OF REGISTRATION” BY THE COMMISSIONER OF
SECURITIES OF THE OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-5-.13 is to provide by rule for the annual expiration of all existing broker-dealer and agent registrations. The Rule further sets forth those requirements governing the annual renewal of such expiring registrations.

Main Features:

The main feature of this rule is its provision that all broker-dealer and agent registrations expire at midnight on December 31 of each year. Additionally, the Rule further sets forth those requirements, systems, and procedures governing the annual renewal of such expiring registrations.

Text of Rule:

590-4-5-.13 Expiration and Renewal of Registration.

- (1) All broker-dealer and agent registrations expire at midnight on December 31 of each year.
- (2) All procedures, renewal schedules and fee collection methods announced by the CRD shall be applicable to registration renewals processed through the CRD for broker-dealers or agents.
- (3) Except as otherwise provided in Subsection (4) below, all renewal applications must be filed with all necessary information and required filing fees no earlier than October 1st and no later than December 31st of each year.
- (4) An application for renewal registration as a broker-dealer or agent shall be filed consistent with instructions from FINRA as operators of the CRD, shall contain the fee required by the Act and shall contain such amendments to the initial registration as may be required by the applicable provisions of the Act or these Rules.
- (5) Agents or broker-dealers who are registered through the CRD shall submit an annual renewal fee directly through the CRD. Any agent or broker-dealer bond or evidence of the continuation of an agent or broker-dealer bond shall be sent directly to the Commissioner.
- (6) Unless otherwise provided by the Commissioner, renewal of registration as a broker-dealer or agent shall be effective when the Commissioner has received notice from the CRD that all fees have been paid and when the required bond has been filed with the Commissioner.
- (7) During the period after the broker-dealer registration has expired (January 1) and before the effectiveness of the renewal application, the broker-dealer shall have no authority to transact securities business in Georgia.

Authority: O.C.G.A. Secs. 10-5-35, 10-5-39, 10-5-70, 10-5-74

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-5-.14 ENTITLED
“MULTIPLE REGISTRATIONS” BY THE COMMISSIONER OF SECURITIES OF
THE OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-5-.14 is to provide by rule for the registration of a broker-dealer agent with more than one broker-dealer at the discretion of the Commissioner.

Main Features:

The main feature of this rule is its provision permitting an individual to apply to be registered as an agent with more than one broker-dealer by the filing of a separate U-4 application through CRD by each registered broker-dealer and the payment of separate application fees, as required, through CRD. The Commissioner may deny such multiple registration applications if he or she determines that it is not in the best interests of the public.

Text of Rule:

590-4-6-.14 Multiple Registrations.

(1) An individual may apply to be registered as an agent for more than one broker-dealer by the filing of a separate U-4 application through CRD by each registered broker-dealer and the payment of separate application fees, as required, through CRD. The Commissioner may deny the multiple registration applications if he or she determines that it is not in the best interests of the public. By having the multiple registration applications submitted on his or her behalf, the agent affirmatively represents that he or she will make all disclosures to his or her clients and the affected broker-dealers regarding actual or potential conflicts of interests.

(2) Each broker-dealer that employs a multiple registered agent shall comply with the requirements of CRD regarding the multiple registration of agents.

(3) Nothing in this Rule shall relieve the broker-dealer for whom an agent is actually acting of the responsibilities imposed by the Act and the Rules for the transactions of each agent.

Authority: O.C.G.A. Secs. 10-5-31, 10-5-35, 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-5-.15 ENTITLED
“CROSS BORDER TRANSACTIONS” BY THE COMMISSIONER OF SECURITIES
OF THE OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-5-.15 is to provide by rule for a broker-dealer that is registered in Canada or other foreign jurisdiction to, in limited circumstances, effect transactions in securities in Georgia.

Main Features:

The main feature of this rule is to enumerate those specific situations under which a broker-dealer registered in Canada or another foreign jurisdiction may effect securities transactions in Georgia.

Text of Rule:

590-4-6-.15 Cross Border Transactions.

(1) A broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in Georgia may effect transactions in securities with, or for, or attempt to, effect the purchase or sale of any securities by:

(a) An individual from Canada or other foreign jurisdiction who is temporarily present in Georgia and who maintains his/her domicile in Canada or other foreign jurisdiction and with whom the qualifying broker-dealer had a bona fide customer relationship before the individual entered the United States;

(b) An individual from Canada or other foreign jurisdiction who is present in Georgia and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or

(c) An individual who is present in Georgia, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction.

(2) An agent who represents a qualifying broker-dealer that is exempt under this Subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in Georgia, and who is properly registered with the broker-dealer pursuant to the laws of the broker-dealer's home jurisdiction, shall be exempt in the identical manner as the qualifying broker-dealer described in Subsection (1) of this Rule.

Authority: O.C.G.A. Secs. 10-5-30, 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-5-.16 ENTITLED
“DISHONEST OR UNETHICAL BUSINESS PRACTICES”BY THE COMMISSIONER
OF SECURITIES OF THE OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-5-.16 is to prohibit broker-dealers and broker-dealer agents from engaging in certain enumerated acts.

Main Features:

The main feature of this rule is to enumerate those specific acts which the Commissioner has prohibited as being dishonest or unethical business practices when engaged in by broker-dealers and/or broker-dealer agents.

Text of Rule:

590-4-5-.16 Dishonest or Unethical Business Practices.

(1) Every entity, organization, or individual regulated by the Act shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of business. The Commissioner may, at his or her discretion, take such action authorized by the Act regarding any entity, organization, or individual regulated by the Act.

(2) The following are prohibited acts:

(a) Broker-Dealers

1. Making false, misleading, deceptive, or exaggerated, representations or predictions in the offer, purchase or sale of securities;

2. Representing, agreeing, or guaranteeing, directly or indirectly, in writing or orally that:

(i) There is a guarantee against loss or risk;

(ii) The customer's capital will increase or that the purchase involves a preservation of original capital and protection against loss in value;

(iii) The securities will be repurchased or resold; or

(iv) A market will be established in the shares that will regularly be bought and sold;

3. Executing a transaction on behalf of a customer without authorization to do so;

4. Recommending to a customer the purchase, sale or exchange of securities without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based on the customer's financial condition, investment objectives, and risk tolerance;

5. Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of the order;

6. Effecting transactions pursuant to discretionary authority that are excessive in size or frequency in relation to the financial resources of the customer or the character of his or her account;

7. Knowingly effecting transactions in a customer account for the purpose of accumulating or compounding commissions;

8. Charging an excessive or unreasonable markup or commission;

9. Offering to buy or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell at such price and under such conditions as are stated at the time of such offer to buy or sell;

10. Using any advertising or sales presentation in such a fashion as to be deceptive or misleading;

11. Marking any order ticket or confirmation as unsolicited when in fact the transaction was solicited;

12. Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

13. Creating an impression of false supply or demand or manipulating a market to create false supply or demand;

14. Engaging or aiding in "boiler-room" operations or high pressure tactics in connection with the promotion of speculative securities by means of an intensive telephone campaign or unsolicited calls to persons not known by or having an account with the salesperson or broker-dealer, whereby the prospective purchaser is encouraged to make a hasty decision to buy, irrespective of his or her investment needs and objectives;

15. Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he or she is acting or with whom he or she is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer;

16. Failing to refrain from soliciting prospective customers who have informed the broker-dealer that such persons do not want to be solicited, and conducting business by telephone at unreasonable times;

17. Failing to furnish to a customer purchasing securities in a registered offering, no later than the date of confirmation of the transaction, a final or preliminary prospectus, and, if the latter,

failing to furnish a final prospectus within a reasonable period after the effective date of the offering;

18. Failing to make a bona fide offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

19. Failing to segregate a customer's free securities or securities held in safekeeping; and

20. Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by the rules of the SEC.

(b) Agents

1. Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

2. Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

3. Engaging in an outside business activity away from the broker-dealer without giving prior written notice;

4. Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

5. Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

6. Dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control; and

7. Engaging in conduct specified in subsection (1)(a).

(3) Senior-specific Certifications and Designations. The improper use of a senior-specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly, through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicate or imply that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person shall be a dishonest and unethical business practice.

Authority: O.C.G.A. Secs. 10-5-41(a), 10-5-70.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-5-.17 ENTITLED
“ASSOCIATED PERSONS OF AN ISSUER DEEMED NOT TO BE BROKER-
DEALERS” BY THE COMMISSIONER OF SECURITIES OF THE OFFICE OF THE
GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-5-.17 is to provide by rule for a safe harbor exemption from broker-dealer registration to certain associated persons of an issuer of securities if such persons meet the conditions set forth in the Rule.

Main Features:

The main feature of the Rule is to provide an exemption from broker-dealer registration to certain associated persons of an issuer of securities. An “associated person of an issuer” is, without limitation, any natural person who is a partner, officer, director, or employee of the issuer or corporate general partner/managing member of the issuer. An associated person of an issuer selling securities of that issuer shall not need to register as a broker-dealer if such person, among other things, receives no commissions or other remuneration for selling securities, is not an associated person of a broker-dealer, and meets other additional conditions as set forth in the Rule.

Text of Rule:

590-4-5-.17 Associated Persons of an Issuer Deemed not to be Broker-Dealers

(1) An associated person of an issuer of securities shall not be deemed to be a broker-dealer solely by reason of his participation in the sale of the securities of such issuer if the associated person:

(a) Is not subject to a statutory disqualification, as that term is defined in section 3(a)(39) of the Securities Exchange Act of 1934, at the time of his participation;

(b) Is not compensated in connection with his participation by the payment of commissions or other remuneration based either directly or indirectly on transactions in securities;

(c) Is not at the time of his participation an associated person of a broker-dealer; and

(d) Meets the conditions of any one of paragraph (1)(d) 1., 2., or 3. of this section.

1. The associated person restricts his participation to transactions involving offers and sales of securities:

(i) To an Institutional Investor, as defined in O.C.G.A. section 10-5-2(13);

(ii) That are exempted by reason of section 3(a)(7), 3(a)(9) or 3(a)(10) of the Securities Act of 1933 from the registration provisions of that Act;

(iii) That are made pursuant to a plan or agreement submitted for the vote or consent of the security holders who will receive securities of the issuer in connection with a reclassification of securities of the issuer, a merger or consolidation or a similar plan of acquisition involving an exchange of securities, or a transfer of assets of any other person to the issuer in exchange for securities of the issuer; or

(iv) That are made pursuant to a bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment or similar plan for employees of an issuer or a subsidiary of the issuer;

2. The associated person meets all of the following conditions:

(i) The associated person primarily performs, or is intended primarily to perform at the end of the offering, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in securities; and

(ii) The associated person was not a broker-dealer, or an associated person of a broker-dealer, within the preceding 12 months; and

(iii) The associated person does not participate in selling an offering of securities for any issuer more than once every 12 months other than in reliance on paragraph (1)(d)(i) or (iii) of this section, except that for securities issued pursuant to rule 415 under the Securities Act of 1933, the 12 months shall begin with the last sale of any security included within one rule 415 registration.

3. The associated person restricts his participation to any one or more of the following activities:

(i) Preparing any written communication or delivering such communication through the mails or other means that does not involve oral solicitation by the associated person of a potential purchaser; provided, however, that the content of such communication is approved by a partner, officer or director of the issuer;

(ii) Responding to inquiries of a potential purchaser in a communication initiated by the potential purchaser; provided, however, that the content of such responses are limited to information contained in a registration statement filed under the Securities Act of 1933 or other offering document; or

(iii) Performing ministerial and clerical work involved in effecting any transaction.

(2) No presumption shall arise that an associated person of an issuer has violated O.C.G.A. § 10-5-30 solely by reason of his participation in the sale of securities of the issuer if he does not meet the conditions specified in paragraph (1) of this section.

(3) Definitions. When used in this section:

(a) The term associated person of an issuer means any natural person who is a partner, officer, director, or employee of:

1. The issuer;
2. A corporate general partner of a limited partnership, or managing member of a limited liability company, that is the issuer;
3. A company or partnership that controls, is controlled by, or is under common control with, the issuer; or
4. An investment adviser registered under the Investment Advisers Act of 1940 to an investment company registered under the Investment Company Act of 1940 which is the issuer.

(b) The term associated person of a broker-dealer means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial and any person who is required under the laws of any State to register as a broker or dealer in that State solely because such person is an issuer of securities or associated person of an issuer of securities shall not be included in the meaning of such term for purposes of this section.

Authority: O.C.G.A. Sec. 10-5-2(3)(E).